

**REMARKS**

Claims 1-76 were pending as of the Official Action mailed April 15, 2009. Claims 1, 19, 37, and 55 are in independent form. Claims 1, 19, 22, 37, 40, and 55 are being amended. No new matter has been added. Claims 4 and 58 are being canceled.

Reconsideration of the action is respectfully requested in light of the foregoing amendments and the following remarks.

**Interview Summary**

Applicant would like to thank Examiner Hom for his courtesy and professionalism in conducting an interview on June 30, 2009 after issuance of the Official Action mailed April 15, 2009. The following is a summary of the interview:

1. No exhibit or demonstration was conducted.
2. The pending § 101 and § 102 rejections were discussed.
3. The general nature of the cited reference Mahany was discussed.
4. Examiner Hom agreed that Mahany does not teach all the features of claim 1, specifically that Mahany does not teach a system that uses a third different data rate as recited by claim 1.
5. Applicant agreed to amend claims 1, 19, 37, and 55 to further clarify the relationship between the first data rate, second data rate, and third different data rate.
6. Examiner Hom agreed to withdraw the pending § 101 and § 102 rejections.
7. No other pertinent matters were discussed.

Applicant would also like to thank Examiner Hom for promptly issuing an Interview Summary on July 9, 2009. Applicant notes that the listing of participants in the Interview Summary includes "attorney William E. Hunter". Applicant respectfully submits that William E. Hunter was not a participant; the participants included Mark D. Kirkland and H. Holm Hsieh.

### **Allowable Subject Matter**

Applicant acknowledges the Examiner's indication that claims 23-31 and 41-49 would be allowable if rewritten to include all of the limitations of the respective base claims and any intervening claims. Applicant reserves the right to amend claims 23-31 and 41-49 at a future time to include the limitations of their respective base claims and any intervening claims.

### **Section 101 Rejections**

Claims 1-18 and 73 were rejected under 35 U.S.C. § 101 as allegedly not falling within one of the four statutory categories of invention. Applicant respectfully submits that the § 101 rejections are moot as Examiner Hom agreed to withdraw the pending § 101 rejections as indicated in the Interview Summary mailed July 9, 2009.

### **Section 112 Rejections**

Claims 55-72 and 76 were rejected under 35 U.S.C. § 112, first paragraph, as allegedly failing to comply with the written description requirement. Applicant respectfully traverses the rejection.

In particular, the Examiner stated that, "The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The specification does not describe a computer-readable medium having instructions stored thereon as recited in claims 55-72 and 76." (Pages 4-5 of Official Action dated April 15, 2009).

Applicant respectfully disagrees. Applicant respectfully submits that claims 55-72 and 76 of the originally filed application recited a "computer program". Applicant respectfully asserts that a person of ordinary skill in the art would understand that a computer program includes instructions and can be stored on a computer-readable

medium. Therefore, Applicant respectfully submits that claims 55-72 and 76 are in allowable form.

### **Section 102 Rejections**

Claims 1-4, 16-22, 34-40, 52-58 and 70-72 were rejected under 35 U.S.C. § 102(b) as allegedly being anticipated by U.S. Patent No. 5,483,676 ("Mahany"). Applicant respectfully submits that the § 102 rejections are moot as Examiner Hom agreed to withdraw the pending § 102 rejections as indicated in the Interview Summary mailed July 9, 2009.

Notwithstanding, as a clarification, Applicant has amended claim 1 to recite selecting a third different data rate from a plurality of available data rates, and each of the plurality of available data rates is different from a first data rate and a second data rate. Applicant respectfully asserts that the relied upon portions of Mahany also do not teach or suggest this feature. For at least this additional reason, Applicant respectfully submits that amended claim 1 is allowable over the relied upon portions of Mahany.

Claims 2-3 and 16-18 depend from claim 1 and are allowable for at least similar reasons as set forth above with respect to claim 1, and in view of the additional recitations they contain.

Claim 19, as amended, is directed to an apparatus and includes a rate selector that selects a third different data rate from a plurality of available data rates, and each of the plurality of available data rates is different from a first data rate and a second data rate. For at least similar reasons as set forth above with respect to claim 1, claim 19 is allowable over the relied upon portions of Mahany.

Claims 20-22 and 34-36 depend from claim 19 and are allowable for at least similar reasons as set forth above with respect to claim 19, and in view of the additional recitations they contain.

Claim 37, as amended, is directed to an apparatus and includes selecting a third different data rate from a plurality of available data rates, and each of the plurality of available data rates is different from a first data rate and a second data rate. For at least

similar reasons as set forth above with respect to claim 1, claim 37 is allowable over the relied upon portions of Mahany.

Claims 38-40 and 52-54 depend from claim 37 and are allowable for at least similar reasons as set forth above with respect to claim 37, and in view of the additional recitations they contain.

Claim 55, as amended, is directed to a computer-readable medium and includes selecting a third different data rate from a plurality of available data rates, and each of the plurality of available data rates is different from a first data rate and a second data rate. For at least similar reasons as set forth above with respect to claim 1, claim 55 is allowable over the relied upon portions of Mahany.

Claims 56-57 and 70-72 depend from claim 55 and are allowable for at least similar reasons as set forth above with respect to claim 55, and in view of the additional recitations they contain.

### **Section 103 Rejections**

Claims 14-15, 32-33, 50-51, 68-69 and 73-76 are rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Mahany in view of U.S. Patent No. 7,075,913 ("Yavuz"). Applicant respectfully traverses the rejection.

Applicant respectfully submits that the Examiner did not assert that Yavuz teaches or suggests the features of claim 1, 19, 37, or 55. Applicant respectfully submits that claims 14-15 and 73; 32-33 and 74; 50-51 and 75; and 68-69 and 76 depend from claims 1, 19, 37, and 55, respectively, and are allowable for at least the same reasons set forth above with their respective base claims.

### **Conclusion**

For the foregoing reasons, Applicant submits that all the claims are in condition for allowance.

By responding in the foregoing remarks only to particular positions taken by the Examiner, Applicant does not acquiesce with other positions that have not been explicitly addressed. In addition, Applicant's selecting some particular arguments for the patentability of a claim should not be understood as implying that no other reasons for the patentability of that claim exist. Finally, Applicant's decision to amend or cancel any claim should not be understood as implying that Applicant agrees with any positions taken by the Examiner with respect to that claim or other claims.

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Respectfully submitted,

Date: July 15, 2009

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